

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 311 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A M C

Versus

VINABEN DESAI

Appearance:

MR BP TANNA & MR SR BRAHMBHATT for Petitioner

MR NK MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/07/97

ORAL JUDGMENT

#. The Ahmedabad Municipal Corporation, Ahmedabad, challenges, by this Special Civil Application, the Award of the Industrial Tribunal, Ahmedabad, made in Reference (IT) No.99 of 1983 on 5.11.88.

#. An industrial dispute has been raised by the respondent-workman regarding grant of pay scale of Rs.1400-2700 with effect from 1.1.80 instead of grade of

Rs.700-1300.

#. During the course of proceedings in Reference, it has been given out that the demand be restricted for the pay scale of Rs.1100-1600, and under the Award impugned, the Industrial Tribunal has awarded the pay scale of Rs.1100-1600 to the workman with effect from 1.1.80.

#. The learned counsel for the petitioner contended that the respondent is not a workman and as such Reference itself was incompetent. The respondent was holding the post of Assistant Entomologist, Malaria Department of the Corporation and taking into consideration the nature of duties she has to discharge, she could not have been considered to be a 'workman'. It has next been contended that the pay scale of Rs.700-1300 has been given on the basis of recommendations of one man pay commission and as such, the Corporation has not committed any error.

#. On the other hand, the learned counsel for the respondent firstly raised a preliminary objection that this writ petition has been filed on 28th December 1989, i.e. after more than one year from the date of the Award, and as such, it deserves to be dismissed only on the ground of delay and laches. It has next been contended that this Special Civil Application has been filed under Article 227 of the Constitution of India and as such, it should have been filed within a reasonable time, i.e. time provided in the Limitation Act for filing of appeals to this Court from lower Court and this one year period cannot be said to be reasonable period. It has further been contended that the petitioner has not given out any explanation for this delay in filing this Special Civil Application. He further contended that the industrial tribunal has recorded finding of fact on the basis of evidence of parties that the respondent herein is a workman and this Court, sitting under Article 227 of the Constitution of India may not interfere with the finding of this fact. The finding recorded by industrial Tribunal cannot be said to be perverse or a finding which has been directed on misreading of material evidence. The learned counsel for respondent, Shri N.K.Majmudar, urged that even if it is taken that the respondent is not a workman, then too, she cannot be rendered remediless and this Court has to consider her claim for grant of pay scale of Rs.1100-1600. Lastly, Shri Majmudar, learned counsel for respondent, submitted that this Court, under Article 227 of the Constitution may decline to interfere in a matter where it finds that the claim of respondent is justified. The power under Article 227 of the Constitution of India is restricted to cases of grave

dereliction of duty and flagrant abuse of fundamental principles of law and justice and it should have been exercised where grave injustice would be done unless this Court interferes. In support of this contention, the learned counsel for respondent placed reliance on decision of Hon'ble Supreme Court in the case of Laxmikant Revachand Bhojwani v. Pratapsingh Mohansingh Pardesi, reported in 1995(6) SCC 576.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. From the document annexure 'C', produced by the petitioner itself, it transpires that before 1976, the pay scale of the four posts, namely Laboratory Officer, Superintendent of Vaccination, Senior Legal Assistant, & Assistant Entomologist were Rs.290-636, 290-735, 290-735, and 290-735 respectively. The one man pay commission recommended for revision of pay scales of Rs.290-635 and 290-735 to Rs.1100-1600 for the first three posts, whereas for the post of respondent herein, the pay scale recommended was recommended Rs.700-1300. The educational qualifications for appointment to the post of Laboratory Officer is Graduation, for the post of Superintendent of Vaccination is L.C.P.S., and for the post of Senior Legal Assistant is Law Graduate. But the educational qualifications for the post of respondent, i.e. for the post of Assistant Entomologist is M.Sc. So, in comparison to the educational qualifications prescribed for first three posts, higher educational qualification was required for recruitment to the post of Assistant Entomologist. Till 1976, when all the three posts, except post No.1, were having same pay scales and the post No.1 was having lesser pay scale than the post of Assistant Entomologist, the prescription of pay scale of Rs.700-1300 for this post on the basis of recommendation of one man pay commission cannot be said to be reasonable. The learned counsel for the petitioner is unable to satisfy this Court how the pay scale of Rs.700-1300 has been prescribed for the post for which minimum educational qualification was M.Sc. Moreover, when the pay scale of all the posts having pay scale of Rs.290-735 was revised to Rs.1100-1600, then to prescribe lower pay scale in the revised pay scale to the post of Assistant Entomologist, the petitioner should have given out more cogent and justified reasons for this act, both before Industrial Tribunal as well as before this Court. The learned counsel for the petitioner is unable to give out any satisfactory reason for this deviation. The claim of respondent for the pay scale of Rs.1100-1600 cannot be said to be unjustified, unreasonable or

arbitrary in the presence of fact that till 1976 the pay scale of three posts were identical and pay scale of one post was lower and that the pay scale of Rs.290-635 and of Rs.290-735 was revised to Rs.1100-1600. There is yet another point which needs consideration. The pay scale for the post of Laboratory Officer, till 1976, was lower than the pay scale of Assistant Entomologist, but in revision, pay scale of Rs.1100-1600 has been given to the post of Laboratory Officer whereas the post of Assistant Entomologist was given the pay scale of Rs.700-1300.

#. I do not find that any illegality has been committed by the Industrial Tribunal by granting the pay scale of Rs.1100-1600 to the respondent from 1.1.80. I do find sufficient merits in the contention of Shri N.K.Majmudar, learned counsel for the respondent that substantial justice has been done by Industrial Tribunal and even if the respondent is not a workman, then too, this Court may not interfere. Even if the contention of learned counsel for the petitioner that the respondent was not a workman, has some merits, then too, this Court may decline to interfere in the matter in the facts of this case. In a case where the Court finds that the claim of respondent is justified on merits, then even if it is taken that the reference was not maintainable, what for this Court should interfere. The jurisdiction under Article 227 of the Constitution of India is meant for doing justice to the parties and not to deny justice to the parties on a technical ground. Even if there is some merits in the contention of the counsel for the petitioner regarding lack of jurisdiction of Industrial Tribunal, in the present case where no prejudice is caused to the petitioner, this Court may decline to interfere. Where substantial justice has been done to the parties and no injustice is likely to be caused to the petitioner, this Court may justify to decline to interfere in the matter. A reference in this respect may have to the two decisions of the Hon'ble Supreme Court in the case of A.M.Allison v. B.L.Sen, reported in AIR 1957 SC 227, and in the case of Balvantrao Chimanlal Trivedi, Manager, Raipur Mafg. Co. Ltd., v. M.N.Nagrashna & Ors., reported in AIR 1960 SC 407.

#. In the case of Laxmikant Revachand Bhojwani (supra), the Hon'ble Supreme Court, while dealing with the scope of jurisdiction of this Court under Article 227 of the Constitution of India, it has been held that this Court cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It is must be restricted to cases of grave dereliction of duties or flagrant abuse of fundamental principles of law or

justice where grave injustice will be done unless the High Court interferes. So, interference in the matter under Article 227 of the Constitution of India may be in a case where injustice would be done unless this Court interferes. In the present case, in case this Court interferes on the ground of lack of jurisdiction of industrial tribunal, as contended by the learned counsel for the petitioner, then certainly injustice would be done to the respondent. The net result of the aforesaid discussion is that this Special Civil Application is wholly devoid of any substance.

##. In the result, the Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stand vacated. No order as to costs.

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